

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**YARED BEYENE, TADELU KIDANU,
HAILEMARIAM GEBREMARIAM, JEA
HUN LEE, ZEWDU GIRMA, KIM
SENGSAVANG and RABEEA AL-
ALWADI,**

Plaintiffs,

v.

**COVERALL NORTH AMERICA, INC.
d/b/a COVERALL CLEANING
CONCEPTS, PACIFIC COMMERCIAL
SERVICES, LLC, and COVERALL OF
NASHVILLE, INC.,**

Defendants.

**Case No: 3:06-cv-628
Judge William J. Haynes**

**DEFENDANT COVERALL NORTH AMERICA, INC.'S
MOTION TO STAY PROCEEDINGS
PENDING ARBITRATION OR, IN THE ALTERNATIVE, TO DISMISS**

In lieu of answering, Defendant, Coverall North America, Inc. d/b/a Coverall Cleaning Concepts ("Coverall"), by its attorneys, respectfully moves this honorable Court (i) pursuant to Section 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §3, to Stay Proceedings Pending Arbitration, or, in the alternative (ii) to dismiss Plaintiffs' Complaint pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. In support of its Motion, Coverall states as follows:

1. This action arises out of six (6) written Franchise Agreements entered into by and between the Plaintiffs and either Coverall, a franchisor of commercial janitorial cleaning

businesses, or Pacific Commercial Services, LLC (“PCS”), Coverall’s master franchisee for Nashville, Tennessee.

2. Coverall is a party to Franchise Agreements with Plaintiffs Tadelu Kidanu, Hailemariam Gebremariam, Kim Sengsavang, and Rabeea Al-Alwadi. Each of these Franchise Agreements require the parties to submit all disputes arising out of or relating to the Franchise Agreements or the parties’ relationship to arbitration before the American Arbitration Association. Since Plaintiffs’ claims fall well within the ambit of the parties’ arbitration agreements, §3 of the FAA requires that this action be stayed pending arbitration.

3. In the alternative, Plaintiffs’ Complaint should be dismissed pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs’ Complaint provides none of the detail required by Rule 9(b). Rather, Plaintiffs simply lump all Defendants together and vaguely allege that at unspecified times, “Defendants” made certain unspecified misrepresentations as to what Plaintiffs would receive upon entering into the Franchise Agreements.

4. Additionally, Plaintiffs’ claim for negligent misrepresentation should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted. Under Tennessee’s economic loss rule, a defendant may only be liable for negligent misrepresentation if that defendant is in the business of supplying information. Because Coverall is not in the business of supplying information, Count III of Plaintiffs’ Complaint should be dismissed, with prejudice.

5. In support of this motion, Coverall relies upon the accompanying memorandum of law and the Declaration of Kevin Derella, a copy of which is annexed to this Motion. Coverall also relies upon (i) the previously filed June 21, 2006 Declaration of Kevin Derella, a copy of

which is annexed to Coverall's Notice of Removal as Exhibit A (Dkt. #1), and (ii) the June 21, 2006 Declaration of David Wood, a copy of which is annexed to Coverall's Notice of Removal as Exhibit B (Dkt. #1.)

WHEREFORE, Defendant, Coverall North America, Inc. respectfully prays for an Order staying this action pending arbitration or, in the alternative dismissing Plaintiffs' Complaint in its entirety pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of July 2006, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

_____/s/ John R. Tarpley_____